

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P. No.243 of 2001 (SS)

Keshav Dutt vs. State of Uttarakhand

Approved for reporting.

~~Not approved for reporting~~

Date of decision. 20.11.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 243 of 2001 (SS)

Keshav Dutt son of Sri Durga Dutt
Fire Brigade Service Station,
Nainital Road, Haldwani,
District Nainital

..... Petitioner

Versus

1. State of Uttaranchal
2. Nagar Palika Haldwani

..... Respondents

Sri B.D. Upadhyay, Advocate for the petitioner
Standing Counsel for the respondents.

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for the issue of a writ, order or directions in the nature of mandamus directing the respondents to pay the retrial benefits to the petitioner in accordance with law with interest at the rate of 18% per annum.

Brief facts giving rise to the present writ petition are that petitioner was posted as driver in Nagar Palika, Haldwani, District Nainital. He retired on reaching the age of superannuation on 31.12.1986. According to the petitioner the retirement benefits are admissible to the petitioner in accordance with U.P. Nagar Palika Decentralised Retirement Benefits Rule 1984.

The petitioner has stated that he has filed a claim petition No.9 of 1995 before the Public Service Tribunal, Lucknow. The tribunal

vide its judgment and order dated 22.3.1999 directed the respondents to take a decision in respect of the retirement benefits admissible to the petitioner.

At the time of admission on 20.12.2000 this Court has passed the following order:

“The respondents are directed either to show cause or pay the retrial benefits to the petitioner within six weeks. List after six weeks.”

Learned counsel for the respondents have stated that he is occupying accommodation of Nagar Palika at Haldwani and so he is not coming forward to complete the formalities. If the petitioner is occupying any accommodation illegally, the respondents are at liberty to charge penal rent from the petitioner or to initiate proceedings for eviction of the petitioner under appropriate law.

It has been held by the Apex Court in the case Gorakhpur University and others vs. Dr. Shitla Prasad Nagendra and others (2001)6 SCC 591as under:

“Withhholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards provident fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee. In the context of this, mere reliance on behalf of the appellant upon yet

another decision of a different Division Bench of the very High Court rendered without taking note of any of the earlier decisions of this Court but merely proceeding to decide the issue upon equitable considerations of balancing conflicting claims of respective parties before it does not improve the case of the appellant any further.”

Learned counsel for the petitioner has relied upon in 1985 (1) S.C.C. State of Kerala and other Vs. M. Padmanabhan Nair in which the Hon'ble Supreme Court has held that pension is a valuable right and property and the petitioner has a right to claim by virtue of the continuous services rendered by him. The observations of the Apex Court are quoted below:-

“Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with penalty of payment of interest at the current market rate till actual payment.”

The aforesaid judgment of the Apex Court has also been followed in JT 1999 (2) SC 359 Dr. Uma Agarwal Vs. State of U.P. & another and has held as under: -

“Now-a-days, several writ petitions are being filed in this court and various High Courts seeking relief for disbursement, of retrial benefits, because of inordinate delays in payment of these benefits. As

Krishna Iyer J. stated in State of Mysore Vs. C.R. Sheshadri & others (1974(4) S.C.C. 308), a retired government official is sensitive to delay in drawing monetary benefits. And to avoid posthumous satisfaction of the pecuniary expectation of the superannuated public servant- not unusual in government, it is becoming necessary to issue directions, in several cases, for early payment of these dues. In yet another case in State of Kerala and others Vs. M. Padmanabhan Nair (1985 (1) SCC 429 this court had occasion to point out that usually 'the delay occur by reason of non-production of the L.P.C. (Usually) 'the delay occur by reason of non-production of the L.P.C. (last pay certificate) and the N.L.C. (no liability certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.'"

In *R. Kapur Vs. Director of Inspection (Painting and publication) Income Tax and another*, reported in (1994) 6 Supreme Court Cases 589 the Apex Court after relying the judgment of the

Apex Court in State of Kerala Vs. M. Kadmanabhan Nair 1985 (1) S.C.C. page 429, has held as under:-

“8. In this appeal before us the appellant urges that he would be entitled to 18% interest at least in view of judgment of this Court in State of Kerala Vs. M. Padmanabhan Niar. Relying on this ruling, it is submitted that there is unjustified culpable delay in issuing the No Demand. Certificate. The Tribunal having held that DCRG cannot be withheld because of the pendency of the claim for damages should have awarded interest at the rate of 18% per annum.

.....

10. This court in M. Madmanabhan Nair case has held as under:-

Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.”

In view of the aforesaid, retirement benefits admissible to the petitioner cannot be withheld by the respondents.

The respondents are, therefore, directed to release all retirement benefits admissible to the petitioner within one month from the date of filing certified copy of this order. The petitioner shall also be entitled to get interest on pension @ 6% per annum besides this he shall be paid admissible interest on G.P.F. gratuity, G.I.S. etc.

With the aforesaid observations the writ petition is allowed. No
order as to costs.

20.11.2003

(Rajesh Tandon, J.)

Dhyani